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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/913,330	08/13/2001	Shane Robert McGill	978-53	7091

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EXAMINER	
MADSEN, ROBERT A	
ART UNIT	PAPER NUMBER
1761	

DATE MAILED: 05/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	09/913,330	MCGILL, SHANE ROBERT	
	Examiner	Art Unit	
	Robert Madsen	1761	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *22 February 2005 and 27 April 2005*.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *57-67* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *57-67* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date *April 27, 2005*.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on February 22, 2005 has been entered. Claims 57-67 remain pending in the application.

2. The Amendment filed April 27, 2005 has also been entered.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

4. Claims 57, 59, 62 are rejected under 35 U.S.C. 102(a) as being anticipated by Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1).

5. Astegno et al. '181 is the national phase of WO 98/336670, and as such must include the same specification. Thus '181 is relied on as a translation, where needed, for WO 98/336670.

6. Regarding claim 57, Astegno et al. '670 teach a container is charged with food and refrigerated or frozen, applying a closing member to seal the container(either lid 11

or 9 plus 12 in Figures 3 and 4), the container with food product is removed from the refrigerator or the freezer and placed within a microwave oven (Page 4, lines 18-27 in light of Column 2, line 63 to Column 3 line 6 of '181) the container is fitted with a blending element (item 2)located in the container and releasably located in driving engagement with a motor external to the microwave (via item 4 ,see Abstract , Page 6, lines 23-25 , translated in Column 4, lines 7-10 in '181)and extends through and adjacent to the closure member (i.e. at item 10) to blend the food product after heating the food product, and the product is dispensed (i.e. Page 2, lines 21-23, translated in Column 1, lines 60-62 of '181). Although Astegno et al. '670 do not explicitly state that the container is located in a blending position in the microwave, Astegno et al. '670 implicitly teach this since the container is designed to be carried/placed in the blending position because Astegno et al. '670 teach handle 17 and bottom 16 (i.e. the blending position being the upright position shown in Figure 1).

7. Regarding claim 59, the drive, or motor means, is moved to engage and disengage and connected to the blending element via the removable drive shaft 4 (Abstract, Figure 1, Page 6, lines 23-25 , translated in Column 4, lines 7-10 in '181).

8. Regarding claim 62, teaches the container is for storage of the product in the freezer, heating and blend the product, which would involve "transporting" the container from the freezer to a "dispensing location" (e.g. outside of the freezer) where the container is heated in the microwave and mixed, and finally serving, which involves a "customer" to consume out of the container (Abstract, Page 2, lines 7-23, in light of

Column 1, lines 40-64 of '181 and Page 4, lines 18-27 in light of Column 2, line 63 to Column 3 line 6 of '181).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

10. Claims 58 ,61,64 are rejected under 35 U.S.C. 103(a) as being unpatentable over Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) as applied to claims 57,59,62 above, further in view of Boulard (US 4937418) .

11. Astegno et al. (WO 98/336670) teach heating in the microwave and mixing after heating, Astegno et al. '670 are silent in teaching the microwave energy is directed outwardly from an internal region in the container, as recited in claim 58, such as by an antennae means located in a member extending through the food as recited in claim 61.

12. Boulard teaches conventional heating in the microwave does not provide a uniform distribution of microwave energy throughout a bulk material. Boulard teaches in order to obtain uniform heating in a microwave oven, one should use a blending element that includes internal antennae to heat a container holding bulk material to evenly distribute microwave energy throughout the entire bulk of material in the container as recited in claims 58 and 61. The motor for rotating the antennae (e.g. item 8) is positioned outside of the area exposed to microwave energy. Boulard teaches

providing the internal antennae integrated with the blending element will *assure* the microwaves are distributed evenly *even if* the blending element rotates slowly. Boulard further teaches that with this type of mixing while heating in the microwave oven , the oven preferably has means for preventing the container from rotation, as recited in claim 64 (column 1, lines 9-23 ,45 –68 Figures,). Therefore, it would have been obvious to modify the method of Astegno et al. '670 and include antennae located in a member extending through the food such that microwave energy is directed outwardly from an internal region of the container as recited in claims 58 and 61, since Boulard teaches such antennae with the blending element (i.e. the member extending through the food) will assure that there is a uniform distribution of microwave energy regardless of the blending element speed. It would have been further obvious to hold the container against rotation, as recited in claim 64, since Boulard teaches that one should provide a means for preventing the container from rotating in a microwave oven when one is mixing bulk material in the container while heating in a microwave oven.

13. Claims 60 and 65 are rejected under 35 U.S.C. 103(a) as being unpatentable over Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) as applied to claims 57 ,59 and 62 above, further in view of Shulze (DE 3930337A).

14. Astegno et al. '670 teach the drive, or motor means, is moved to engage and disengage, connected to the blending element via the removable drive shaft 4 after heating, but are silent in teaching the drive engagement occurs *during* heating as well as recited in claim 60 or that the microwave energy is directed from at least two different

per se directions as recited in claim 65(Abstract, Figure 1, Page 6, lines 23-25 , translated in Column 4, lines 7-10 in '181).

15. Shulze teaches that distribution of energy and heat in a container used to heat materials via microwave energy is more uniform and independent of the microwave distribution by providing a blending element inside the container connected to a drive external the microwave energy enclosure. Shulze also teaches utilizing a microwave oven with microwave energy being directed from opposite sides in combination with the blending element. Therefore, it would have been obvious to modify the blending element of Astegno et al. such that it can remain in the container during microwave heating and blend during heating, Shulze teach blending materials in a container such that the motor is outside the heating enclosure and the blending element is inside the container during microwave heating will result in a more uniformly heated material. It would have been further obvious to direct the microwave energy from at least two different directions since Shulze teaches this type of microwave oven in combination with blending while heating will result in a more uniformly heated material.

16. Claim 63 is rejected under 35 U.S.C. 103(a) as being unpatentable over Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) as applied to claims 57 ,59 and 62 above, further in view of Levinson et al. (US 5925394).

17. Astegno et al. teach freezing, heating, blending, and serving liquids or solids, but fail to teach the liquids or solids generate carbonation when blending. Levinson et al. also teach preparing a solid via freezing, heating by microwave, and blending.

Levinson et al. teach forming a frozen whipped cream product comprising carbonated beverage, such as soda or champagne, wherein carbon dioxide is generated during mixing and including such carbonated beverages (Column 4, lines 58-64, Column 5, line 58, Column 13, line 15 to Column 14, line 3). Therefore, it would have been obvious to modify Astegno et al. and include a whipped cream product that generates carbon dioxide since Astegno et al. teach a container for freezing, heating by microwave, blending, and serving, and Levinson et al. teach a whipped cream flavored by carbonated beverage, that is prepared by freezing, heating by microwave, and blending in a single container. One would have been substituting one conventional food recipe for another utilizing the same steps of freezing, heating by microwave, and blending in a container.

18. Claim 66 is rejected under 35 U.S.C. 103(a) as being unpatentable over Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) as applied to 57 ,59 and 62 above, further in view of Woodman (US 2760762).

19. Astegno et al. '670 teach the blending element (e.g. item 2)is placed on the bottom of container , the shaft is attached, and, as a unit, they are covered by the lid and the shaft is engaged to the motor located above the lid(Page 9, lines 14-18, evidenced by the translation in Column 5, lines 35-43 of '181). However, Astegno et al. '670 are silent in teaching the blending element is an integral part of the container.

20. Woodman also teaches a container with a blending element located on the bottom container wherein the means for rotating the blending element is above the lid of

the container. However, Woodman teaches it is easier to assemble containers like this when the blending element is already an integral part of the bottom of the container so that one only needs to position the shaft into the blending element (Column 1, lines 15-62). Therefore, it would have been obvious to make the blending an integral part of the container since Woodman teaches by providing a blending element as an integral portion of the base of a container assembly is made easier.

21. Claim 67 is rejected under 35 U.S.C. 103(a) as being unpatentable over Astegno et al. (WO 98/336670) evidenced by Astegno et la. (US 6193181 B1) as applied to claims 57 ,59 and 62 above.

22. Astegno et al. '670 teach the blending element (e.g. item 2)is placed in the container and as a unit, they are covered by the lid and engaged to the motor (Page 9, lines 14-18, evidenced by the translation in Column 5, lines 35-43 of '181). Although Astegno et al. do not explicitly how the container/blending element/motor arrangement is dissembled, it would have been obvious to disengage and remove the blending element and container from the motor as the unit because this is the reverse of the assembly step and it was notoriously well known to dissemble equipment in the opposite order of assembly.

Response to Arguments

23. Applicant's arguments filed February 22, 2005 with respect to the rejections of Claims 57,59,60,64-66 under 35 U.S.C. 102(b) as being anticipated by Jump et al. (US

4959517), Claims 58 and 61 under 35 U.S.C. 103(a) as being unpatentable over Jump et al. (US 4959517) further in view of Boulard (US 4937418), Claim 62 under 35 U.S.C. 103(a) as being unpatentable over Jump et al. (US 4959517), further in view of Reed (US 2626133), Claim 63 under 35 U.S.C. 103(a) as being unpatentable over Jump et al. (US 4959517), further in view of Fiedler (US 4659575) and Reed (US 2626133), and Claim 67 under 35 U.S.C. 103(a) as being unpatentable over Jump et al. (US 4959517) in light of the amended claim language have been fully considered and are persuasive. Therefore, the rejections have been withdrawn. However, upon further consideration, new grounds of rejection are made as set forth above.

Conclusion

24. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Robert Madsen whose telephone number is (571) 272-1402. The examiner can normally be reached on 7:00AM-3:30PM M-F.

25. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton Cano can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

26. Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Robert Madsen
Examiner
Art Unit 1761

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